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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,450

02/25/2004

Michael Jack Zakharoff

ID-911 (80235)

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EXAMINER

KEEHN, RICHARD G

ART UNIT

PAPER NUMBER

2152

NOTIFICATION DATE

DELIVERY MODE

03/07/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/786,450	Applicant(s) ZAKHAROFF, MICHAEL JACK	
	Examiner Richard G. Keehn	Art Unit 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/25/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-30 have been examined and are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 2, 4-6, 8-11, 13-15, 17, 18, 20-22, 24, 25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2005/0063005 A1 (Phillips et al.), and further in view of US 6,675,215 B1 (Cedola), and US 2002/0046250 A1 (Nassiri), and US 6,282,565 B1 (Shaw et al.), and US 2005/0114453 A1 (Hardt).

As to Claims 1, 10, 17 and 24, Phillips et al. discloses an invention substantially as claimed, including a communications system, delivery server, electronic mail

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communications method and computer-readable medium having computer-executable instructions for performing steps, hereafter referred to as the “system”, comprising:

at least one destination server for hosting a plurality of electronic mail (email) message boxes (Phillips et al. – Page 2, paragraph [0024] recites the interconnection via WAN with target devices including cell phones, PDA’s and E-Mail Servers);

a plurality of communications devices for generating email messages each associated with a respective message box (Phillips et al. – Page 1, paragraph [0011] recites a plurality of users generating email messages to be sent to a plurality of destination mailboxes, implicitly each having a respective mailbox by virtue of the plurality of email target addresses within said messages); and

a delivery server comprising a plurality of queues (Phillips et al. – Page 2, paragraph [0038] recites the delivery server) and

a controller for storing the email messages generated by said communications devices in a first queue (Phillips et al. – Page 2, paragraph [0039] recites the Queue Manager which controls incoming and outgoing email queues), and

attempting to send the stored email messages to said at least one destination server (Phillips et al. – Page 3, paragraph [0045] recites the transmission of stored email messages to other users on the network).

Phillips et al. do not disclose, but Cedola discloses an invention substantially as claimed, including at a first sending rate (Cedola - Claims 7 and 8 recite the progressive testing, and if fail, sending at a slower speed), and

attempting to send email messages stored in said second queue to said at least one destination server at a second sending rate less than the first sending rate (Cedola - Claims 7 and 8 recite the progressive testing, and if fail, sending at a slower speed).

Phillips et al. do not disclose, but Nassiri discloses an invention substantially as claimed, including moving email messages stored in said first queue to a second queue based upon a delivery failure (Nassiri – Page 1, paragraph [0009] recites the moving of an email from one queue to another based on the failure to deliver based on a timeout condition being met), and

with a successfully delivered email message (Nassiri – Page 1, paragraph [0009] recites the ability to detect the success or failure to deliver based on a timeout condition being met).

Phillips et al. do not disclose, but Shaw et al. disclose an invention substantially as claimed, including moving email messages from said second queue to said first queue (Shaw et al. – Column 11, lines 23-29 recite the initial movement of an incoming email into a queue based on rules established. It also recites the movement of email from one queue to another based on changes in categorization. Column 5, lines 15-20 recite one criteria being the recipient address).

Phillips et al. do not disclose, but Hardt discloses an invention substantially as claimed, including having a common characteristic (Hardt – Page 1, paragraph [0011] recites the ability to identify among incoming email messages, the common characteristic of the same destination server based upon the address of the email message).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine at a first sending rate and attempting to send email messages stored in said second queue to said at least one destination server at a second sending rate less than the first sending rate taught by Cedola, with at least one destination server for hosting a plurality of electronic mail (email) message boxes and a plurality of communications devices for generating email messages each associated with a respective message box and a delivery server comprising a plurality of queues and a controller for storing the email messages generated by said communications devices in a first queue and attempting to send the stored email messages to said at least one destination server, hereby referred to as the "Phillips et al. system" taught by Phillips et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to reduce or eliminate communication errors by matching the send-receive rates of the communicating devices, and trying different rates to resolve communication failures (Cedola - Column 2, lines 43-47).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine moving email messages stored in said first queue to a second queue based upon a delivery failure and with a successfully delivered email message taught by Nassiri, with the Phillips et al. system taught by Phillips et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide automatic routing to a different queue based on failure so that a retry can automatically occur, and to provide the ability to detect success or

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failure of email delivery to improve efficiency of the system (Nassiri – Page 1, paragraph [0009]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine moving email messages from said second queue to said first queue taught by Shaw et al., with the Phillips et al. system taught by Phillips et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide a method of altering an email's queue location based on changes in delivery performance (Shaw et al. – Column 11, lines 23-29).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the common characteristic of the same destination server based upon the address of the email message taught by Hardt, with the Phillips et al. system taught by Phillips et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to identify common characteristics to those previously received to assist in filtering (Hardt - Page 1, paragraph [0001]).

As to Claims 2, 11, 18 and 25, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the system of Claims 1, 10, 17 and 24 respectively, wherein the delivery failures are based upon a failure to deliver email messages to respective message boxes (Nassiri – Page

1, paragraph [0009] recites the moving of an email from one queue to another based on the failure to deliver based on a timeout condition being met); and

wherein the common characteristic comprises a common message box (Hardt – Page 1, paragraph [0011] recites the ability to identify among incoming email messages, the common characteristic of the same destination server based upon the address of the email message).

The motivation and obviousness arguments for Nassiri and Hardt are the same as in Claim 1.

As to Claims 4, 13, 20 and 27, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the system of Claims 1, 10, 17 and 24 respectively, wherein said controller stores directly in said second queue email messages generated by said communications devices sharing the common characteristic with an email message already stored in said second queue (Hardt – Page 1, paragraph [0011] recites the ability to identify among incoming email messages, the common characteristic of the same destination server based upon the address of the email message and sort on the basis of address).

The motivation and obviousness arguments for Hardt are the same as in Claim 1.

As to Claims 5, 14, 21 and 28, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the system of Claims 1, 10, 17 and 24 respectively, wherein said second queue comprises

a plurality thereof arranged in a hierarchy each having a respective storage interval associated therewith (Nassiri – Page 1, paragraph [0009] recites each queue having a storage interval),

the storage intervals successively increasing from a highest queue in the hierarchy to a lowest queue (Cedola - Claims 7 and 8 recite the progressive testing, and if fail, changing the speed hierarchy from a higher to lower rate, which equates to changing the duration of time from low to high);

wherein said controller moves email messages stored in said first queue to one of the queues in the hierarchy based upon a delivery failure (Nassiri – Page 1, paragraph [0009] recites the moving of an email from one queue to another based on the failure to deliver based on a timeout condition being met); and

wherein said controller moves [sic] in a higher [sic] in the hierarchy to a next lower [sic] in the hierarchy (Cedola - Claims 7 and 8 recite the progressive testing, and if fail, changing the speed hierarchy from a higher to lower rate)

after being stored in said higher queue for the storage interval thereof (Nassiri – Page 1, paragraph [0009] recites the moving of an email from one queue to another based on the failure to deliver based on a timeout condition being met); and

email messages stored (Nassiri – Page 1, paragraph [0009] recites the moving of an email from one queue to another based on the failure to deliver based on a timeout condition being met); and

queue (Nassiri – Page 1, paragraph [0009] recites the moving of an email from one queue to another based on the failure to deliver based on a timeout condition being met).

The motivation and obviousness arguments for Nassiri and Cedola are the same as in Claim 1.

As to Claims 6, 15, 22 and 29, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the system of Claims 5, 14, 21 and 28 respectively, wherein said controller attempts to send messages from each of said queues in the hierarchy at successively decreasing sending rates from said highest queue to said lowest queue (Cedola - Claims 7 and 8 recite the progressive testing, and if fail, sending at a slower speed).

The motivation and obviousness arguments for Cedola are the same as in Claim 1.

As to Claim 8, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the communications system of Claim 1 wherein at least one of said plurality of communications devices comprises a wireless communications device (Phillips et al. – Page 2, paragraph [0024] recites the interconnection via WAN with target devices including cell phones, PDA's and E-Mail Servers).

As to Claim 9, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the communications system of Claim 1 further comprising a wide area network (WAN) connecting said at least one destination server and said delivery server (Phillips et al. – Page 2, paragraph [0024] recites the interconnection via WAN with target devices including cell phones, PDA's and E-Mail Servers).

4. Claims 3, 12, 19 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt as applied to claims 1, 10, 17 and 24 above respectively, and further in view of US 2003/0145106 A1 (Brown).

As to Claims 3, 12, 19 and 26, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the system of Claims 1, 10, 17 and 24 respectively,

wherein the delivery failures are based upon a failure to deliver email messages to said destination servers (Nassiri – Page 1, paragraph [0008] recites failure to deliver based on a delivery timeout condition being met); and

wherein the common characteristic comprises having respective message boxes hosted by a common destination server (Hardt – Page 1, paragraph [0011] recites the

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ability to identify among incoming email messages, the common characteristic of the same destination server based upon the address of the email message).

The combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt does not disclose, but Brown discloses an invention substantially as claimed, including wherein said at least one destination server comprises a plurality of destination servers (Brown – Page 2, paragraph [0026] recites the group of email servers);

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said at least one destination server comprises a plurality of destination servers taught by Brown with the Phillips et al. system taught by the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt.

One of ordinary skill in the art at the time the invention was made would have been motivated to provide an intermediary to improve network traffic flow (Brown – Page 1, paragraphs [0005-0007]).

5. Claims 7, 16, 23 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt as applied to claims 5, 14, 21 and 28 above respectively, and further in view of US 5,632,011 (Landfield et al.).

As to Claims 7, 16, 23 and 30, the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt discloses an invention substantially as claimed, including the system of Claims 5, 14, 21 and 28 respectively.

The combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt does not disclose, but Landfield et al. discloses an invention substantially as claimed, including wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof (Landfield et al. – Column 2, lines 12-22 recite the deletion of undeliverable messages from the queue. The fact that it is determined undeliverable is the same as the applicant's determination on non-deliverability based on failure to deliver at the lowest queue).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine wherein said controller discards messages from said lowest queue in the hierarchy after being stored therein for the storage interval thereof taught by Landfield et al., with the Phillips et al. system taught by the combination of Phillips et al., Cedola, Nassiri, Shaw et al. and Hardt.

One of ordinary skill in the art at the time the invention was made would have been motivated to improve management of email by allowing undeliverable emails to be discarded (Landfield et al. – Column 1, lines 56-61).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These include:

- US 2003/0061287 A1 – Method and System for Delivering Files in Digital File Marketplace
- US 2005/0204002 A1 – Dynamic Online Email Catalog and Trust Relationship Management System and Method
- US 2005/0091318 A1 – Enabling a Sender to Control Future Recipients of an Email
- US 2007/0203994 A1 – Communications System Providing Message Aggregation Features and Related Methods

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Keehn whose telephone number is 571-270-5007. The examiner can normally be reached on Monday through Thursday, 8:30am - 7:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RGK

/Bunjob Jaroenchonwanit/
Supervisory Patent Examiner, Art Unit 2152